

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

AMERICAN CABLE ASSOCIATION,
CTIA – THE WIRELESS ASSOCIATION,
NCTA – THE INTERNET & TELEVISION
ASSOCIATION, NEW ENGLAND CABLE
& TELECOMMUNICATIONS
ASSOCIATION, and USTELECOM – THE
BROADBAND ASSOCIATION, on behalf of
their members,

Plaintiffs,

v.

PHILIP B. SCOTT, in his official capacity as
the Governor of Vermont; SUSANNE R.
YOUNG, in her official capacity as the
Secretary of Administration; JOHN J. QUINN
III, in his official capacity as the Secretary and
Chief Information Officer of the Vermont
Agency of Digital Services; and JUNE E.
TIERNEY, in her official capacity as the
Commissioner of the Vermont Department of
Public Service,

Defendants.

Case No. 2:18-cv-00167-CR

**STIPULATION REGARDING WITHDRAWAL OF PENDING MOTIONS TO
DISMISS AND FOR SUMMARY JUDGMENT WITHOUT PREJUDICE**

Plaintiffs the American Cable Association, CTIA – The Wireless Association, NCTA – The Internet & Television Association, New England Cable & Telecommunications Association, and USTelecom – The Broadband Association (collectively, “Plaintiffs”), and Defendants Philip B. Scott, Susanne R. Young, John J. Quinn III, and June E. Tierney in their official capacities (“Defendants,” and collectively with Plaintiffs, the “Parties”), by and through their respective counsel, hereby stipulate and agree as follows:

WHEREAS, on December 24, 2018, pursuant to Fed. R. Civ. P. 12, Defendants filed a Motion to Dismiss Plaintiffs' Complaint, which has been fully briefed. ECF Nos. 24, 27, 33.

WHEREAS, on January 23, 2019, pursuant to Fed. R. Civ. P. 56, Plaintiffs filed a Motion for Summary Judgment on their first claim for relief, and further briefing on this motion is currently pending. ECF No. 28.

WHEREAS, a hearing on the Parties' motions has been set for April 11, 2019. ECF No. 32.

WHEREAS, on March 14, 2019, the Parties filed a Stipulation for Temporary Stay and Injunction Barring Enforcement of Executive Order No. 2-18 and Act 169 (the "Stipulation for Temporary Stay and Injunction"), in which they stipulated and agreed, among other items set forth therein, to stay further proceedings in *American Cable Association v. Scott*, No. 2:18-cv-00167-CR, until the later of the following: (a) the D.C. Circuit issues its opinion in the petitions for review of the FCC Order currently pending in *Mozilla Corp. v. FCC*, Nos. 18-1051 *et al.* (D.C. Cir.), and the period for seeking further review from the D.C. Circuit and the U.S. Supreme Court has expired; or (b) a final decision has been issued by the D.C. Circuit or the U.S. Supreme Court in response to any petition for rehearing or certiorari, either denying such petition or issuing a final decision. ECF No. 38.

WHEREAS, the Parties also agreed in the Stipulation for Temporary Stay and Injunction that the stipulation and agreements set forth therein shall not be construed as bearing on the merits of the action or considered precedent in this or any other matter, and the Court's entry of a stay and injunction shall not be considered in the adjudication of any dispositive motions. ECF No. 38.

WHEREAS, the stipulation and agreements herein shall not supersede, modify, or in any way affect the terms and conditions of the Stipulation for Temporary Stay and Injunction.

WHEREAS, on March 14, 2019, the Parties also filed a Contingent Stipulation for Extension of Time, in which the Parties stipulated and agreed to extensions of time for the Defendants' brief in opposition to Plaintiffs' Motion for Summary Judgment and the Plaintiffs' responses to Defendants' discovery requests, to the extent that the applicable deadlines expire before a Temporary Stay and Injunction is granted.

WHEREAS, the stipulation and agreements herein shall affect the Parties' Contingent Stipulation for Extension of Time only to the extent that it relates to Defendants' brief in opposition to Plaintiffs' Motion for Summary Judgment, which will be rendered moot in light of Plaintiffs' withdrawal of that motion without prejudice.

NOW THEREFORE, in consideration of the foregoing, the Parties further stipulate and agree as follows:

1. Defendants' Motion to Dismiss (ECF No. 24) is deemed withdrawn without prejudice to Defendants' ability to refile the motion after expiration of the stipulated and agreed-upon stay set forth in the Stipulation for Temporary Stay and Injunction;
2. Plaintiffs' Motion for Summary Judgment (ECF No. 28) is deemed withdrawn without prejudice to Plaintiffs' ability to refile the motion after expiration of the stipulated and agreed-upon stay set forth in the Stipulation for Temporary Stay and Injunction; and
3. In light of the Parties' withdrawal of these motions without prejudice, the hearing currently scheduled for April 11, 2019 is unnecessary and the Parties hereby request that the Court cancel this hearing.
4. The Parties stipulate and agree to bear their own respective attorneys' fees and

costs related to the potential refiling of the aforementioned withdrawn motions and responses.

Dated: March 18, 2019

Respectfully submitted,

/s/ David A. Boyd

David A. Boyd
VERMONT OFFICE OF THE ATTORNEY
GENERAL
109 State Street
Montpelier, VT 05609
david.boyd@vermont.gov

Attorney for Defendants
John J. Quinn, III, June E. Tierney,
Philip B. Scott, and Susanne R. Young

/s/ David M. Pocius

David M. Pocius
PAUL FRANK + COLLINS PC
1 Church Street
Post Office Box 1307
Burlington, VT 05402
dpocius@pfcflaw.com

Attorney for Plaintiffs
American Cable Association, CTIA – The
Wireless Association, NCTA – The Internet &
Television Association, New England Cable &
Telecommunications Association, and
USTelecom – The Broadband Association

Scott H. Angstreich (*pro hac vice*)
Brendan J. Crimmins (*pro hac vice*)
Rachel P. May (*pro hac vice*)
KELLOGG, HANSEN, TODD
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, DC 20036
sangstreich@kellogghansen.com
bcrimmins@kellogghansen.com
rmay@kellogghansen.com

Attorneys for Plaintiffs
CTIA – The Wireless Association and
USTelecom – The Broadband Association

Jeffrey A. Lamken (*pro hac vice*)
MOLOLAMKEN LLP
600 New Hampshire Ave., N.W., Suite 660
Washington, DC 20037
jlamken@mololamken.com

Attorney for Plaintiff
American Cable Association

Matthew A. Brill (*pro hac vice*)
Matthew T. Murchison (*pro hac vice*)
Adam Tuetken (*pro hac vice*)
LATHAM & WATKINS LLP
555 Eleventh Street, N.W., Suite 1000
Washington, DC 20004
matthew.brill@lw.com
matthew.murchison@lw.com
adam.tuetken@lw.com

Attorneys for Plaintiffs
NCTA – The Internet & Television
Association and New England Cable &
Telecommunications Association